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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/628,721	07/28/2003	Sang Woo Ji	11037-131-999	6727

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EXAMINER

LUONG, VINH

ART UNIT	PAPER NUMBER
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3682

DATE MAILED: 01/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/628,721

Applicant(s)

JI, SANG WOO

Examiner

Vinh T Luong

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 September 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 6 is/are rejected.
- 7) ☒ Claim(s) 2-5 and 7 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.



Vinh T. Luong
Primary Examiner

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 9/3/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

2. The abstract of the disclosure is objected to because of the implied phrase "is disclosed."

Correction is required. See MPEP § 608.01(b).

3. The drawings are objected to because each part of the invention such as the vehicle body in claim 1 should be designated by a referential numeral or character.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified

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and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The disclosure is objected to because of the following informalities: each part of the invention such as the vehicle body in claim 1 should be designated by a referential numeral or character. Appropriate correction is required.

5. The information disclosure statement (IDS) filed September 3, 2003 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

The Examiner respectfully submits that Applicant submitted a copy of Japanese Utility Model No. 2002-173007, but not the Japanese Utility Model No. 2000-370979 cited in the IDS.

6. The information disclosure statement filed September 3, 2003 fails to comply with 37 CFR 1.98(a)(1), which requires a list of all patents, publications, or other information submitted for consideration by the Office. It has been placed in the application file, but the information referred to therein has not been considered.

The Examiner respectfully submits that Applicant submitted a copy of Japanese Utility Model No. 2002-173007, however, JP'007 was not listed.

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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8. Claims 1 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Engelgau et al. (US Patent No. 6,186,025 B1 cited in Applicant's specification).

Regarding claim 1, Engelgau teaches a brake pedal apparatus (*id.*, col. 2, lines 16-43) comprising a pedal arm assembly having a first pedal arm 20 connected to a vehicle body 16, and a second pedal arm 30 with an upper end rotatably connected to a lower end of the first pedal arm 20 and a lower end provided with a pad 36 to that receives a load; a driving part 40, 140 configured to generate torque for selectively holding the second pedal arm 30 with respect to the first pedal arm 20; and a controller 21 controlling the driving part 40, 140.

Regarding claim 6, Engelgau teaches a brake pedal, comprising: a controller 21; at least one sensor (not shown) communicating with said controller 21; said sensor generating a signal in response to an impact; a brake pedal assembly including first and second pivotably linked arms 20 and 30; and a linkage 40, 140 operatively joining said first and second arms 20 and 30, said linkage 40, 140 responsive to the controller 21 to selectively rigidly link or permit pivoting between said arms 20 and 30 in response to said signal from said sensor.

Note that although Engelgau does not show at least one sensor, however, Engelgau's pedal assembly inherently has at least one sensor in communication with the controller 21 as claimed. Without the sensor, Engelgau's controller would be inoperative for its intended purpose. In fact, the use of sensor for sending the signal to the controller is notoriously well known as evidenced by the art cited (see, e.g., sensor 17 in US Patent No., 5,385,068 issued to White et al. and sensor 22 in US Patent No. 6,571,661 B1 issued to Hemenway et al.)

9. Claim 6 is rejected under 35 U.S.C. 102(b) as being anticipated by Watanabe (US Patent No. 5,797,467).

Watanabe teaches a brake pedal, comprising: a controller 201; at least one (magnetic) sensor 230 communicating with said controller 201; said sensor 230 generating a signal in response to an impact; a brake pedal assembly including first and second pivotably linked arms 228 and 216 (Fig. 26); and a linkage 224, 223 operatively joining said first and second arms 228 and 216, said linkage 224, 223 responsive to the controller 201 to selectively rigidly link or permit pivoting between said arms 228 and 216 in response to said signal from said sensor 230.

Note that Watanabe's pedal inherently can be a brake pedal or an accelerator pedal. To use the pedal for braking or accelerating merely denotes an intended use. It is well established that: (a) a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus if the prior art teaches all the structural limitations of the claims. *Ex parte Masham*, 2 USPQ2d 1647 (BPAI 1987); and (b) the functional limitations of a claim may not be given patentable weight where those limitations are inherent in a prior art reference. *In re Schreiber*, 44 USPQ2d 1429 (CAFC 1997). In addition, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

10. Claims 2-5 and 7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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11. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Jacobson (Fig. 3), Seitzinger (magnets 22 and 23), and Callicutt et al. (arms 36 and 38).

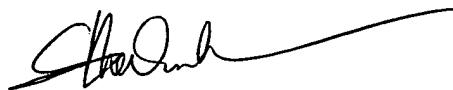
13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vinh T. Luong whose telephone number is 703-308-3221. The examiner can normally be reached on Tuesday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bucci can be reached on 703-308-3668. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Luong

January 11, 2005



Vinh T. Luong
Primary Examiner